

MOEEL LAH FAKHOURY LLP  
Shaffy Moeel (State Bar No. 238732)  
2006 Kala Bagai Way, Suite 16  
Berkeley, CA 94704  
Telephone: (510) 500-9994  
Email: shaffy@mlf-llp.com

Attorneys for Asa Houston

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ASA HOUSTON,

Defendant.

**Case No.: 2:24-CR-00621-MWF-5**

**DEFENDANT ASA HOUSTON'S  
SUPPLEMENTAL AUTHORITY IN  
SUPPORT OF MOTION TO DISMISS  
COUNT FOUR**

1 Defendant Asa Houston submits supplemental authority in support of his motion to dismiss  
2 Count Four of the Second Superseding Indictment, charging him with use, carry and discharge of a  
3 firearm and machinegun, in furtherance of a crime of violence, resulting in death, in violation of 18  
4 U.S.C. §§ 924(c)(1)(A)(iii) and (j)(2). *See* Dkt. 226, Motion to Dismiss (“Motion”).

5 Three weeks after the hearing held on Mr. Houston’s motion on November 18, 2025, the Fifth  
6 Circuit decided *United States v. Elkins*, \_\_\_ F.4th \_\_\_, 2025 WL 3537272 (5th Cir. 2025) on  
7 December 10, 2025, and held that cyberstalking resulting in death under 18 U.S.C. § 2261A(2) was  
8 not a “crime of violence” under 18 U.S.C. § 924(c) and reversed a district court holding otherwise.  
9 Dkt. 316. The district court decision reversed by the Fifth Circuit was cited as persuasive authority by  
10 the government in its opposition to Mr. Houston’s motion to dismiss. *See* Dkt. 272, Government’s  
11 Opposition to Defendant Asa Houston’s Motion to Dismiss Count 4 of the Second Superseding  
12 Indictment (“Gov. Oppo.”) at 8 (citing *United States v. Elkins*, 725 F. Supp. 3d 570 (N.D. Tex.  
13 2024)).

14 The Fifth Circuit explained that § 2261A(2) was divisible “because, in separate subsections, it  
15 sets forth the elements of two distinct offenses.” *Elkins*, 2025 WL 3537272, at \*3. It distinguished  
16 between § 2261A(2)(A), which is violated when a defendant places a victim “in reasonable fear of  
17 the death of or serious bodily injury to a person,” and § 2261A(2)(B), which is violated when “with  
18 the specified intent” a defendant “uses certain means to ‘cause[ ], attempt[ ] to cause, or would be  
19 reasonably expected to cause substantial emotional distress to a person.’” *Id.* (quoting §  
20 2261A(2)(B)). Noting “the jury instruction did not require the jury to indicate which offense it found  
21 [the defendant] committed,” it proceeded to analyze whether either subsection of § 2261A(2) was  
22 overbroad. *Elkins*, 2025 WL 3537272, at \*3.

23 Focusing on § 2261A(2)(B), the Fifth Circuit found that “least serious conduct” to support a  
24 conviction would be intending to “harass” or “intimidate” by means that “would be reasonably  
25 expected to cause substantial emotional distress to a person.” *Id.* (quoting § 2261A(2)(B)). It noted  
26 “no use or threatened use of force is required” and the crime could be satisfied by a defendant who  
27 used “an electronic communication service, with intent to harass, causing substantial emotional  
28 distress to the victim.” *Elkins*, 2025 WL 3537272, at \*3.

1 Nor did it matter that the victim’s death resulted because the “penalty provision in  
2 2261(b)...does not require that the stalker use or attempt to use or threaten to use physical force to  
3 cause the death of the victim.” *Id.* at \*4. “For example, the victim could experience such severe  
4 emotional distress from the publication of nude images and sex videos of her that she commits  
5 suicide. Her death would result from the stalking without the use, threatened use, or attempted use of  
6 physical force by the stalker.” *Id.*

7 Moreover, the Fifth Circuit also held that following the Supreme Court’s decision in *Borden v.*  
8 *United States*, 593 U.S. 420 (2021), § 2261A also could not satisfy the definition of a “crime of  
9 violence” because it did not require the *intentional* use of physical, violent force. *Elkins*, 2025 WL  
10 3537272, at \*4-5. It noted that the “resulting-in-death element” in 2261(b)(1) “does not require that  
11 the defendant used, attempted to use, or threatened to use physical force against the victim. It does  
12 not even require that the defendant contemplated use or threatened use of physical force. It only  
13 requires that the ‘death of the victim results’ from the defendant’s conduct. The death of the victim  
14 can result from reckless conduct, such as posting photos on the internet, motivated by intent to harass  
15 or intimidate.” *Elkins*, 2025 WL 3537272, at \*5.

16 The Fifth Circuit summarized “A defendant who stalks a victim using any of the means set  
17 forth in § 2261A, intending to harass the victim and cause severe emotional distress, and who  
18 recklessly triggers their suicide, has engaged in culpable conduct. But they need not have used,  
19 threatened to use, or attempted the use of force against a person to be convicted under §§  
20 2261A(2)(B) and 2261(b).” *Id.* at \*7. Thus, the statute failed to meet the definition of a “crime of  
21 violence.” *Id.*

22 *Elkins* is directly on point here notwithstanding the fact the government is relying on §  
23 2261A(2)(A) in this case, not § 2261A(2)(B) as analyzed by the Fifth Circuit. *See Gov. Oppo.* at 1  
24 (noting government has elected “to proceed only under §§ 2261A(2)(A), 2261(b)(1)—*i.e.*, that the  
25 defendants engaged in course of conduct that placed the victims in reasonable fear of death or serious  
26 bodily injury, resulting in S.R.’s death—not under § 2261A(2)(B).”).

27 First, *both* subsections of § 2261A(2) require nothing more than the “intent to kill, injure,  
28 harass, intimidate.” The Fifth Circuit correctly noted the “specific intent” of “intent to harass or

1 intimidate...is not an intent to kill or physically harm another person.” *Elkins*, 2025 WL 3537272, at  
2 \*5; *see also* Dkt. 285, Defendant Asa Houston’s Reply to Government’s Opposition to Motion to  
3 Dismiss Count Four (“Reply”) at 4-5.

4 Second, none of the means covered by either § 2261A(2)(A) or (B) require any “use of force,”  
5 and can be satisfied by nothing more than “using an electronic communication service.” *Elkins*, 2025  
6 WL 3537272 at \*3; *see* Reply at 5-6.

7 Finally, the fact that death results cannot save the statute because “The death of the victim can  
8 result from reckless conduct, such as posting photos on the internet, motivated by intent to harass or  
9 intimidate.” *Elkins*, 2025 WL 3537272 at \*5; *see* Reply at 6-10. The “death results” language comes  
10 from a different statute—§ 2261(b)—which applies to *both* subsections of § 2261A(2).

11 Thus, for the reasons set forth in *Elkins*, this Court should grant Mr. Houston’s motion to  
12 dismiss.

13 A copy of the opinion in *Elkins* follows this brief.

14  
15  
16  
17 Dated: December 16, 2025

Respectfully submitted,

MOEEL LAH FAKHOURY LLP

*s/ Shaffy Moeel*

Shaffy Moeel

Attorneys for Asa Houston